



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

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APPLICATION NUMBER

FILING DATE

FIRST NAMED APPLICANT

ATTORNEY DOCKET NO.

09/338,058 06/23/99 WHITMYRE

G WHITMYRE-1
EXAMINER

QM32/0623

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EXHIBITS, E PAPER NUMBER

2

DATE MAILED:

06/23/00

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-14 is/are pending in the application.
- Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-14 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.

Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____

Art Unit: 3726

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A) Claim 1, elements (a-c) are vague and/or confusing for the situation of a plurality of pans. In particular elements (b) and (c) are confusing because they appear to claim forming a mold containing a plurality of pans while element (a) claims determining an average shape and dimensions from measuring more than one pan.

B) Claim 12 is vague because there is no disclosure of how much steel is required to meet the "essentially" limitation.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.


4. Claim 14 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by the admitted prior art.

The background of the invention teaches that Caribbean steel pans were known. It is also taught that dimensions are taken from existing pans. Claim 14 is a product-by-process claim.

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Such claims are product claims and the patentability of a product-by-process claim is determined by the structure of the finished article. See In re Thorpe, 227 USPQ 964, (CAFC 1985). The examiner is unable to see any structural difference between the pans made by this process and the pans made by earlier processes.

5. Applicants are requested to submit photocopies of portions of the Handbook for Steel Pan Making related to the manufacturing process. This material appears to be the closest prior art.
6. Kluczynski et al. (5,330,848) teach forming a resonator body for drums.
7. Claims 1-13 present subject matter allowable over the art of record.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to P.W. Echols whose telephone number is (703) 308-1802.



P. W. Echols
Primary Examiner

pwe
June 17, 2000

ATTACHMENT TO AND MODIFICATION OF
NOTICE OF ALLOWABILITY (PTO-37)

(November, 2000)

NO EXTENSIONS OF TIME ARE PERMITTED TO FILE CORRECTED OR FORMAL DRAWINGS, OR A SUBSTITUTE OATH OR DECLARATION, notwithstanding any indication to the contrary in the attached Notice of Allowability (PTO-37).

If the following language appears on the attached Notice of Allowability, the portion lined through below is of no force and effect and is to be ignored¹:

A SHORTENED STATUTORY PERIOD FOR RESPONSE to comply with the requirements noted below is set to EXPIRE **THREE MONTHS** FROM THE "DATE MAILED" of this Office action. Failure to comply will result in ABANDONMENT of this application. ~~Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).~~

Similar language appearing in any attachments to the Notice of Allowability, such as in an Examiner's Amendment/Comment or in a Notice of Draftperson's Patent Drawing Review, PTO-948, is also to be ignored.

¹ The language which is crossed out is contrary to amended 37 CFR 1.85(c) and 1.136. See "Changes to Implement the Patent Business Goals", 65 Fed. Reg. 54603, 54629, 54641, 54670, 54674 (September 8, 2000), 1238 Off. Gaz. Pat. Office 77, 99, 110, 135, 139 (September 19, 2000).